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1. Public Defender's Welcome



Public Defender Ucha Nanuashvili

By issuing No 2 bulletin, we continue to inform public about the activities of the National Preventive Mechanism (Hereinafter referred as NPM). The bulletin offers information about the summer activities of the National Preventive Mechanism. First of all, it is worth noting that presentation of the report on the activities of the National Preventive Mechanism was held within the framework of the event dedicated to the International Day in Support of Victims of Torture on June 26. In addition, more than ten visits were carried out to penitentiary institutions and subsequent reports were published.

It should be emphasized that a full-scale monitoring has been carried out in police stations and temporary detention isolators; the National Preventive Mechanism and the Department of Protection of Human Rights in the Field of Defense carried out joint monitoring in the Senaki military unit and military guardrooms; reports were published about the visits made to No 3 and No 5 (women's) penitentiary facilities. It is important to note that the Public Defender's Department on Prevention and Monitoring, by the financial support from the Open Society Georgia, is conducting a research/survey on complaints/requests procedures in the penitentiary system as well as examining prisoners' confidence in these procedures. This kind of research is being carried out in Georgia for the first time.

The bulletin focuses on the situation in prevention of torture and ill-treatment as well as security and order in closed institutions. During the reporting period, I've made a number of statements about the alarming case of filing charges against the alleged victim of ill-treatment for defamation and I submitted an amicus curiae brief to the court, where I pointed out that the abovementioned case could have a negative impact on prevention of torture and other cruel, inhuman or degrading treatment or punishment.

A number of activities have been carried out in support of the National Preventive Mechanism, which includes improvement of the NPM monitoring methodology and development of professional skills of the staff. Improvement of monitoring guidelines for women's facility, creation of monitoring guidelines for psychiatric institutions and organization of several study visits deserve particular attention.

2. Mandate of the National Preventive Mechanism

Since 2009 the Public Defender of Georgia has been fulfilling the function of the National Preventive Mechanism (NPM) in Georgia. For this purpose the Special Preventive Group was formed at the Public Defender of Georgia, the competences of which are prescribed by the Organic Law on Public Defender of Georgia.

The United Nations Subcommittee on the Prevention of Torture has issued Guidelines on National Preventive Mechanisms to provide interpretation of provisions of the Optional Protocol to the Convention against Torture. It aims to address number of important issues that emerged in practice.¹

The Guidelines define several important issues, according to which the NPM represents an additional system of supervision and it does not rule out or substitute other systems of supervision.² The mandate and powers of the National Preventive Mechanism is defined by a legislative act; functional independence of the National Preventive Mechanism is ensured.

According to article 4 of the Optional Protocol, the NPM mechanism has access to all penitentiary facilities. For prevention of torture and other forms of ill-treatment, the National Preventive Mechanism and relevant state agencies should constantly review the recommendations provided by the National Preventive Mechanism. It is a continuous obligation to ensure effective operation of the NPM and hence, the state, as well as the NPM itself, should constantly check the efficiency of the NPM. At the same time, the opinions of the Subcommittee on the Prevention of Torture should be considered in this process.

The NPM should make all efforts in the process of carrying out each aspect of its mandate to avoid the conflict of interests. The members of the NPM are required to systematically revise the working methodology and to undertake relevant trainings for capacity building.³ The NPM should elaborate an action plan that includes visits to and inspection in all places of deprivation of liberty that are under effective state control. The activities should be planned and the

resources should be allocated in a way that would allow visits to the places of deprivation of liberty at such frequency that would ensure making an effective contribution to the prevention of torture and other forms of ill treatment.⁴

The NPM issues reports after each visit to the closed institutions, as well as annual reports and other reports as needed. Reports should contain relevant recommendations, where appropriate. Recommendations in their turn should be drafted in line with the norms adopted within the frames of the UN concerning the prevention of torture and other forms of ill-treatment, including the comments and recommendations of the Subcommittee on the Prevention of Torture. The NPM is obliged to fully protect the acquired confidential information.⁵

3. The Main Event

3.1 Presentation of NPM's Report



Photo: Public Defender of Georgia

On June 26, 2015, in connection with International Day in Support of Victims of Torture, the Public Defender of Georgia held presentation of the Annual Report of the National Preventive Mechanism. At the opening of the meeting, Public Defender Ucha Nanuashvili spoke about the UN Convention Against Torture and noted that the convention obliges member states to investigate all facts of torture, prosecute and punish perpetrators, pay compensations to victims or take every necessary measure to establish the Independent Investigative Mechanism, which will ensure investigation of facts of torture, inhuman and degrading treatment committed by representatives of law enforcement agencies.

In his welcome speech Deputy Head of the EU Delegation to Georgia Boris Iarochevitch spoke about contribution brought by the National Preventive Mechanism into the cause of protection of human rights. He also noted that being oriented at protection

¹ The Subcommittee on the Prevention of Torture, Guidelines on National Preventive Mechanisms, 2010, para.2

² Id. para. 5

³ Guidelines on National Preventive Mechanism, paras. 30 - 31

⁴ Id. paras. 33-34

⁵ Id. para. 36-37

of human rights is indeed one of the most important criteria that an EU membership aspirant country should be meeting. And in this area, establishment of the Independent Investigative Mechanism is the main recommendation of the European Union in the EU-Georgia dialogue format.

Deputy Public Defender Natia Katsitadze presented the NPM Activity Report. She spoke about monitoring of closed establishments conducted in 2014, reports reflecting results of the monitoring, activity of the Advisory Council of the National Preventive Mechanism, trainings, meetings and cooperation with international organizations, development of new methods and future plans.

When talking about media activities of the National Preventive Mechanism Natia Katsitadze presented proactively renewable section of the web-page on the National Preventive Mechanism and the first issue of a quarterly information bulletin. The bulletin aims at informing the public and raising awareness of work of the National Preventive Mechanism, situation of human rights in closed institutions, international news in torture prevention sphere and other important issues.

The chapter on the National Preventive Mechanism of the Parliamentary Report of the Public Defender of Georgia for 2014 was presented by Head of the Department on Prevention and Monitoring Nika Kvaratskhelia. He reviewed protection safeguards against torture and other ill-treatment, order and safety in penitentiary establishments, imprisonment conditions, penitentiary healthcare, prisoners' contacts with outside world, rehabilitation and re-socialization, situation in agencies subordinate to the Ministry of Internal Affairs of Georgia, protection of migrants from ill-treatment, situation of persons with disabilities who are deprived/restricted of liberty, legal rights of children in small group homes. Special emphasis was put on problems and challenges which, despite many positive changes, still remain in closed institutions and specific recommendations were also presented.

During the course of the presentation and at the discussion that followed there was an especially acute discussion on the issue of criminal case proceedings on charges of false report instituted by Prosecution of Georgia against one of the prisoners on the basis of information provided by the Public Defender of Georgia on the fact of torture and ill-treatment. It was noted that similar incidents create risks that in the

future prisoners will refrain from applying to the Public Defender and this essentially puts in doubt the obligation that was many times assumed by the state on the road to democratic development of the country - obligation to combat torture.

4. Activities of the National Preventive Mechanism

4.1 Visits

4.1.1 Report on the Visit to Women's Penitentiary Facility No 5

On 13 July 2015 a report on the Visit to No 5 women's penitentiary special facility was published. The report provides information on the joint visit by NPM of Georgia and the Department of Gender Equality of the Public Defender's Office, to the No.5 women's facility on 19-20 February, 2015. The monitoring visit, organized with the support of the UN Women, was designed to assess the needs of female inmates and prepare recommendations accordingly. The monitoring group was guided by the Georgian national legislation and the standards defined by the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).

During the monitoring visit there were 272 female inmates of legal age in the facility; 52 out of them were accused and 220 were convicted. 3 women were sentenced to life imprisonment and one of those was pregnant. The positive findings of the monitoring include immediate notification of family members of the prisoners' placement or movement, engagement of inmates in various educational and creative activities, as well as provision of translation service for non-Georgian speaking inmates.

Main problems were revealed with regard to admission and transportation of female prisoners. The monitoring group found out that when prisoners are received at the facility No. 5, they are inspected naked and are requested to squat, which the inmates consider degrading treatment. Inmates who are mothers mentioned that transportation conditions are inadequate (to court or facilities for medical examinations).

The monitoring revealed that there are poor sanitary-hygienic conditions in the facility; it should also be mentioned that the facility did not provide female inmates with tampons or sanitary towels; in this

context, it should be positively noted that as a result of the recommendation made after the monitoring, the facility started to provide prisoners with hygienic tampons. Problems remain in provision of timely medical service, availability of pharmacy shop or medications. No infrastructure is provided for long-term visits. The facility does not have guidelines for treating LBT prisoners.

4.1.2 Visit to Penitentiary Facility No 2

On 1-2 July 2015 the NPM monitored penitentiary facility No 2. During the visit, members of the monitoring group could freely move within the facility and there was not any obstruction from the administration. The prison staff presented all necessary documentation available to them and requested by the group. Penitentiary facility No 2 is a place for imprisonment. The facility is designed for 1840 prisoners. During the visit there were 1508 prisoners (278 defendants and 1230 convicts), including 13 women and 8 juveniles.

It should be noted that during the visit, the Special Preventive Group had not received any information about physical violence or verbal abuse committed by prison officers against prisoners. Nevertheless, a number of problems were identified in terms of prevention of ill-treatment. In this regard, deficiencies were revealed in identification of alleged ill-treatment by medical staff and proper documentation of such facts.

Visual surveillance represents a problem in terms of security. The decree on the use of visual surveillance is not justified and proportionate to the aim. Conditions in the cells are generally satisfactory. However, there is a problem in proper lighting of cells designed for 8-10 inmates. The ventilation system cannot properly ventilate the cells. Some of the cells are damp. There are poor and unsanitary conditions in the quarantine unit. Not all prisoners are provided with 4 square meters of space. Sanitary conditions in the solitary confinement cells are unsatisfactory. The only exception is the solitary cells in the D block, where conditions are generally satisfactory, though these cells are rarely used.

We welcome the fact that since 2014 the number of nurses has increased in the facility, although it should be noted that the number of doctors has been decreased compared to the previous year. Female prisoners cannot fully enjoy gender-specific health services. Timely provision of adequate psychiatric assistance is a severe problem. During the monitoring,

the store of the facility had not been properly supplied with products.

Interviewing part of prisoners about rehabilitation activities is a positive trend; however, the facility cannot provide a large variety of rehabilitation activities.

It should be noted that the use of disciplinary penalties in 2015 has been increased compared to 2014. Lack of guidelines for the application of disciplinary penalties is problematic. Short-term visits through a glass barrier, as well as ignoring the residence places of prisoners' relatives while making a decision on inmates' placement in prisons, are also problematic. Prisoners are unable to make confidential phone calls.

4.1.3 Monitoring in Police Stations and Temporary Detention Isolators of the Ministry of Internal Affairs



Photo: <http://www.timer.ge/?p=8646>

The Special Preventive Group monitored 54 police divisions and 28 temporary detention facilities of the Ministry of Internal Affairs in Kakheti, Imereti, Adjara, Guria, Samegrelo and Zemo Svaneti regions.

During the monitoring, the Special Preventive Group checked the physical environment in the temporary detention facilities, talked with prison staff and examined documents of the inmates arrested in 2015, including protocols on arrests and visual examination, as well as emergency medical service cards. Members of the group were guided by the pre-designed guidelines and the data obtained from penitentiary institutions. The monitoring revealed a number of important cases containing signs of alleged ill-treatment by police. The group members talked to police staff and examined detainees' registration and transfer documents. They visited division buildings; checked the practice of notification of family members of the detention, access to a lawyer and a doctor; interviewed police officers about investigative procedures.

Currently the Special Preventive Group is processing a large volume of data collected during the monitoring and will publish a report in the near future.

4.1.4 Monitoring in Senaki Military Unit and Military Guardrooms



Photo <http://bedegi.ge/>

On August 6-7 Department of Prevention and Monitoring and the Department of Protection of Human Rights in the Field of Defense carried out joint monitoring in the Senaki military unit and military guardrooms. The Department of Protection of Human Right in the Field of Defense was set up in 2015 and its function is to supervise protection of human rights and freedoms in the field of defense. Creation of this department was conditioned by the necessity to carry out democratic control of the Armed Forces. The joint monitoring will help both departments, within their competences, to fully assess prevention of torture, inhuman and degrading treatment and protection of rights and freedoms in the Armed Forces.

4.1.5 Report on the Visit to Penitentiary Facility No 7

On June 19, 2015, the National Preventive Mechanism carried out monitoring of penitentiary facility No 7. Technical reports of experts participating in the monitoring were used in this report together with other materials. Documentation obtained during the visit, as well as the reports of the monitoring group members, are kept in the Public Defender's Office.

The report covers the main findings of the monitoring group and is compiled in such a way that it does not identify the respondent inmates given the confidential nature of the interview. During the visit, members of the monitoring group were able to freely move within the facility and there was no obstruction from the prison administration. However, the Special Preventive Group was not given the opportunity to see the motions of the security department attached to the director's orders. In addition, the prison administration did not provide information of why

they isolated 5 inmates, claiming that the information was confidential. Thus, the group members were not able to assess whether the abovementioned measure was justified and proportionate.

The penitentiary facility No 7 has 27 cells. 14 out of them are designed for two inmates, 5 cells are intended for 4 prisoners, while the rest of the cells are designed for 8 prisoners. During the monitoring period, the cells Nos. 3 and 6 were empty due to being in need of repair. During the visit there were 75 inmates in the facility, including 5 defendants and 70 convicts. As of 19 June 2015, the total number of prisoners was significantly increased compared to the data of December 2013⁶.

After revealing significant violations during the visit carried out in 2013, the Public Defender issued a number of recommendations on closure of the facility No 7. However, the latest visit showed that the situation was worsened in the facility compared to the previous visit due to the increase in the number of prisoners by one-third (25 prisoners). Therefore, the Public Defender's recommendation on the closure of the facility remains unchanged. At the same time, the main goal of the report is to document the current situation of the facility and to offer temporary measures, implementation of which are urgent, for alleviation of the state of inmates before the closure of the institution.

It should be noted that during the visit, the Special Preventive Group has not received any information about physical violence or verbal abuse against prisoners, however, the difficult living conditions in the facility, excessive use of security measures, absence of rehabilitation activities, lack of contacts with family members and generally with the outer world, and other circumstances reflected in this report make it impossible for prisoners to serve their sentences so that their dignity is respected.

The Special Preventive Group considers that all these factors pose a threat to the security and public order in the facility and that the risk of physical violence also increases under such circumstances. It should also be noted that after the group's visit, in July, the Public Defender's Office received a message about alleged fact of physical violence committed by prison administration of the facility No 7 against D.K. and B.K. Investigation was launched into the fact by the Prosecutor's Office following the Public Defender's proposal of July 30.

⁶ 50 inmates were in the facility No 7 in December 2013

One of the major problems in the facility is that the director's decision on the use of security measures is not well-founded. Excessive use of security measures and neglecting prisoners' health and other side effects are also problems.

The problem of physical environment and sanitary conditions is very serious. Living spaces in most of the cells do not comply with the requirements of the Code of Imprisonment. The ventilation system cannot provide enough fresh air movement. There is no natural light in the cells, the toilets are too small and there is no enough space for walking.

Gaps exist in timely and continuous provision of health services. The medical staff does not properly process documents. Dental service and outdated dental equipments are problematic. Mental health and psychiatric service represent major challenges. The visit revealed shortcomings in the control of registration, storage and supply of medications. Needs of different nationalities and religious denominations are not reflected in the food menu.

The facility does not provide for psycho-social rehabilitation activities. There are no enough resources for implementation of such activities. There is a high rate of the use of disciplinary penalties. Not all prisoners are able to enjoy their statutory right to a meeting with a visitor, one of the reasons of which is frequent use of disciplinary penalties. The facility does not provide necessary infrastructure for long-term conjugal visits. Prisoners are unable to make confidential calls frequently enough.

4.2 Dialogue with stakeholders



Photo: Public Defender of Georgia

- On 31 July 2015 a meeting was held between Chief Prosecutor Giorgi Badashvili and Public Defender Ucha Nanuashvili by the initiation of the latter. The meeting was also attended by Deputy Public Defender Natia Katsitadze and Deputy Chief Prosecutor Irakli Shotadze.

The meeting was aimed at discussing several issues that, according to the Public Defender, are important for effective investigation and prevention of crimes, as well as for fight against torture and inhuman or

degrading treatment. The Public Defender focused on inadmissibility of raising criminal or administrative responsibility against inmates in case of providing incorrect or even false information to Public Defender's authorized representatives or members of the National Preventive Mechanism. The Public Defender stressed the importance of conduction of effective investigation into the facts of torture and inhuman or degrading treatment. The Public Defender got interested in performance of a new department of the Prosecutor's Office, created in February 2015 for studying the cases of torture and inhuman treatment. The Public Defender expressed hope that the department's efforts will be transparent and information about its activities will be proactively provided to public.

On August 3, 2015, Minister of Corrections and Probation Kakha Kakhishvili paid a visit to the Public Defender of Georgia.



Photo: Public Defender of Georgia

The meeting was attended by Deputies of Public Defender Paata Beltadze and Natia Katsitadze. Problems and ongoing reforms in penitentiary system, facts of ill-treatment, conditions in the facility No7, access to video recordings and other important issues were discussed at the meeting. It should be noted that Kakha Kakhishvili held his first official meeting after being appointed to the minister's post with the Public Defender, which demonstrates the ministry's desire for active and close cooperation, and gives hopes to the Public Defender that quality of implementation of his recommendations will be increased.

At the end of the meeting the sides agreed on conduction of regular meetings to discuss ongoing important issues.

4.3 Participation in International and Local Events

- On June 2-5, 2015, Nika Kvaratskhelia, the Head of the National Preventive Mechanism, visited

Geneva, where he attended a symposium organized by the Association for the Prevention of Torture (APT). The symposium was dedicated to the protection of LGBT rights in penitentiary facilities.



Photo: <http://www.apr.ch/>

During the visit, Nika Kvaratskhelia participated in the recording of a video on the International Day in Support of Victims of Torture within the framework of the UN Special Rapporteur's initiative.

• On 16 -19 July 2015 a working meeting and a training of the National Preventive Mechanisms were held in Riga. The meeting was attended by Nika Kvaratskhelia, the Head of the Department of Prevention and Monitoring, and Akaki Kukhaleishvili, the Department's research analyst.



The training program was designed for National Preventive Mechanisms integrated with the public defender's institution. The three-day training was organized by the support of the Latvian Ombudsman. The International Ombudsman Institute developed a training format in cooperation with the Association for the Prevention of Torture, which was focused on the implementation of the preventive mandate. 31 representatives of Public Defender's Offices, including Heads of the National Preventive Mechanisms from 22 different countries, took part in the meeting. The training was conducted by experts of the Association for the Prevention of Torture, who not only shared their experience with the participants but also facilitated the exchange of information among them.

Representatives of the National Preventive Mechanism of Georgia, together with representatives several other countries, held a presentation about the specifics of their work.

• Representatives of the Public Defender's Office of Georgia paid a study visit to the Ombudsman's Office of Serbia on July 21-24. The visit was participated by Deputy Public Defender Natia Katsitadze, Head of the Department of Protection of Human Rights in the Field of Defense Tamar Gabiani, Head of the Department of Prevention and Monitoring Nika Kvaratskhelia and Department's senior specialist Levan Begiashvili, as well as Head of the Criminal Justice Department Ekaterine Khutsishvili.



Photo: Public Defender of Georgia

The visit was organized by the Democratic Control Centre of Armed Forces (DCAF) and the Public Defender's Office of Serbia. The visit was aimed at sharing experience of Serbia's Public Defender's Office in military matters, work specifics of the National Preventive Mechanism and monitoring of security sector. Meetings were held with Serbian Public Defender Sasha Jankovic, the Deputy Public Defender, who is at the same time the head of Serbia's National Preventive Mechanism, and the Public Defender's Advisers, who are in charge of democratic and civic control of military and civic security services. The sides discussed in detail the issues of implementation of monitoring in various types of detention facilities, prevention of torture, control of activities of the Defense Ministry and Armed Forces, security sector, as well as monitoring of civic and military intelligence. Representatives of the Public Defender's Office of Georgia briefed the Serbian Public Defender of how their departments work. The sides shared experience in dealing with the issues and challenges raised during their discussions that are important for both Georgian and Serbian Public Defender's Offices.

4.3 Working Methodology and Staff Training

4.3.1 Working Meeting: Further Improvement of Guidelines for Monitoring Women's Penitentiary Facility



Photo: UN Women

On July 9-10 representatives of the Public Defender's Office held a working meeting. The meeting was attended by representatives of the Department of Gender Equality, the National Preventive Mechanism and other Departments of the Public Defender's Office. The purpose of the meeting was improvement of the tools for monitoring women's penitentiary facility. The meeting was organized by the technical support from the UN Women's project on Innovative Actions for Gender Equality (IAGE) and was funded by the EU. During the meeting, the participants worked in five groups on different parts of monitoring tools. In the concluding part of the meeting an updated monitoring tool was presented.

5. Information about Penitentiary Facilities

5.1 Review of Kutaisi Penitentiary Facility No 2



Photo: <http://www.frontnews.ge/>

No 2 facility of the penitentiary department of the Ministry of Corrections and Legal Assistance is located on Kharebava Street No 85 in the city of Kutaisi. It is a closed prison intended both for defendants and convicts. Currently the limit of prisoners in the facility is 1840. The facility was created as a prison and a strict regime establishment by the Justice Minister's order No 2149 on 24 November 2005.

The Public Defender has been monitoring the Kutaisi No 2 facility for years. During this time the situation has changed significantly in the facility. The transfer of inmates to a new prison of Kutaisi on 20 December 2005 led to an unexpected riot. The inmates set fire to the prison to protest against bad living conditions. A special operation was carried out to take control over the situation, during which three law-enforcers and more than a hundred prisoners were injured.

As of 2006, situation was particularly alarming in terms of torture and degrading treatment of prisoners. Existence of video cameras in the rooms intended for meeting with lawyers, investigators and the Public Defender represented a problem.

The monitoring results of 2007 showed that the water system was out of order in the prison. Water was leaking in some cells and corridors.

During the 2008 monitoring, there were 1300 inmates in the facility. There was anti-sanitation and no disinfection was provided. Convicts and defendants were placed together. The prison did not have central ventilation, while the cell windows could poorly provide fresh air. The cells were damp and water was leaking from the ceiling. There were glimmering bulbs in some of the cells. Only former staff members had a large bulb and a radio set. Water was supplied for only two hours a day. Prisoners used to keep water in polyethylene bottles and bathe in the toilets located in the cells. There was a terrible smell in the kitchen; the room was not cleaned after making food; there was dirt everywhere.

As of 2009, there were 776 prisoners in the facility No 2, including 29 women and 19 juveniles which were not placed separately. The kitchen was under repair and food was being prepared only in the half of the room. The administration of juvenile prisoners used to place inmates in a 1-square-meter room with only one wooden bench in it, for a long time, as a punishment.

In 2010 three separate cells were provided for the juveniles. The cells were heated through central system. There was enough light and ventilation. However, medical records provided by doctors were incomplete, and therefore, it was impossible to make full evaluation of patients' general condition.

In the summer of 2011, after the administration of the Kutaisi No 2 facility was changed, the situation significantly worsened in terms of treatment, which had been relatively improved from the fall of 2011 until the summer of 2009. Situation in the facility equaled the state of the facility No 8 in terms of

unduly strict regime. That problem was mentioned in the Public Defender's reports. In some cases, treatment of prisoners in the Kutaisi No 2 facility was even worse than in the facility No 8. For example, officers used to force prisoners in the quarantine cell to stand on knees with their hands on heads for different periods of time as a punishment; sometimes they used to pour chlorine water on the floor in order to deprive prisoners of the possibility to lie on the concrete floor.

Situation was significantly improved in the Kutaisi facility in 2014-2015. The Special Preventive Group has not received any information about physical violence or verbal abuse committed by prison staff against prisoners. Conditions in the cells are generally satisfactory. However, not all inmates are provided with a 4 square meters of space. There are inadequate and poor sanitary conditions in the quarantine department. We welcome the fact that the facility has increased the number of nurses, although the number of doctors has been reduced compared to the previous year. It should be positively noted that inmates were interviewed about rehabilitation activities, but the problem is the lack of variety of rehabilitation activities. Bad practice of visits through glass barriers remains a problem; prisoners are not able to make confidential calls.

6. Dynamics of Implementation of Recommendations

6.1 Review of Dynamics of Implementation of Recommendations

This section analyzes the implementation of main recommendations included in the National Preventive Mechanism reports issued after paying visits to facilities Nos. 17, 2, 3, 8 and 14 in 2014-2015. The Public Defender/Special Preventive Group welcomes the readiness of the addressees of the recommendations to take practical steps concerning the issues reflected in the report, however, it should be negatively noted that the most part of the recommendations/proposals was not shared or positions of the relevant agencies is unknown. Full recommendations are available in the reports issued after each visit to the facilities.

Torture and other cruel, inhuman or degrading treatment

Prevention of torture and ill-treatment is the most important obligation of the state. To fulfill this obligation, the Public Defender issued a

recommendation on ensuring objective internal monitoring in order to prevent ill-treatment, as well as take strict measures against the employees who improperly perform their duties. This recommendation was shared by the Ministry of Corrections and Legal Assistance and certain steps were taken for its implementation.

The decree No 55 of the Ministry of Corrections and Legal Assistance defined the authority of the General Inspection to carry out systematic monitoring and to publish an annual report⁷. The Public Defender once again emphasizes the need for proactive monitoring and will continue to actively monitor practical implementation of the recommendation.

Another important element of the prevention of torture is appropriate documentation of alleged facts of torture and ill-treatment. The Public Defender recommended the Minister of Corrections and Legal Assistance to take all reasonable steps, including appropriate trainings and instructions, to ensure that prison medical staff relevantly document all injuries. In spite of the promises⁸ from the Ministry about development of new forms of documentation of body injuries, no certain practical steps were taken in this direction so far.

In order to ensure prevention of torture and ill-treatment, it is necessary to keep records of the surveillance cameras installed in the facilities for a reasonable period. The Public Defender recommended issuing a relevant decree which would define the reasonable period and ensure access of the National Preventive Mechanism members to these records. Currently the records can be kept, deleted or destroyed within 24 hours. However, analysis shows that the records must be kept for at least 10 days.

Security

Security in the facilities is directly related to the provision of proper conditions for inmates. Therefore, it is important the decisions on security measures to be justified and applied with observance of the principle of proportionality in order to achieve the legitimate purpose. The Public Defender attaches great importance to substantiation of decisions on the use of visual and/or electronic means of surveillance and indicates that application of the mentioned measure without proper substantiation can be considered as a

⁷Decree No. 55 (25 June, 2015) of the Ministry of Corrections and Legal Assistance

⁸Reply Letter N7196 / 15 received by Public Defender on 22 June 2015,

violation of the prisoner's right to privacy. It is important to note that this recommendation was not implemented and no steps were taken in this direction.

Another important recommendation in terms of security is implementation of the dynamic security concept in practice. In this regard, introduction of a new system of classification of inmates must be positively evaluated. According to the reply received from the Ministry of Corrections and Legal Assistance, separate regulations will be created for dynamic security⁹. The Public Defender will closely monitor the implementation process.

Prison conditions

Several recommendations on prison conditions were shared and certain steps were taken to solve the problem of ventilation in the facility No 3. In particular, air conditioners were installed in the mentioned facility. However, no steps were taken in the facilities Nos. 2, 17 and 8. Recommendation was shared but no steps were taken for creation of necessary conditions for sporting activities in the facilities of Nos. 2, 3 and 8. No steps were taken for proper supply of material-technical resources to the above-mentioned institutions. Library has not been updated in the facility No 3. Provision of interpretation service remains a problem in the facilities Nos. 2, 3, 17, 8 and 14. Nothing was done for taking prisoners for a walk in the open air for more than an hour a day.

Medical Service

None of the recommendations on health care services were shared by any of the abovementioned facilities and no steps were taken to ensure proper documentation of medical cases or continuity of medical services. The recommendation on timely supply of medicines not was shared; nothing was done to ensure timely and adequate psychiatric assistance.

Food

The recommendation on consideration of special needs of representatives of different religions during preparation of food was not shared. The Public Defender welcomes the approval of a new joint decree No88-No01-34 by the Ministry of Corrections and the Minister of Health which defines food standards and sanitary-hygienic norms for prisoners. The Special

Preventive Group will closely monitor practical implementation of the decree.

The Public Defender issued a recommendation on proper supply of prison stores with products. Problems in this area exist in all abovementioned facilities. The Ministry of Corrections and Legal Assistance sanctioned the company which used to supply facility stores and signed a contract with a new company. The Public Defender hopes that the problem of supply of stores will be eliminated as soon as possible.

Regime, Disciplinary Responsibility, Encouragement

The Public Defender issued a general recommendation, according to which the prison administration should be guided by the principle of proportionality when imposing disciplinary sanctions and must use the measure of solitary confinement only in exceptional cases. However, situation in this regard is unchanged; no concrete steps were taken for implementation of this recommendation. Growing and excessive use of the measure of solitary confinement is still observed in the facilities.

Contact with the Outer World

The right to short-term visits without glass barriers is not ensured in any of the given facilities. Therefore, despite the fact that this recommendation was shared, no practical steps were taken in this direction.

In addition, consideration of residential places of prisoners' family members during placement of inmates in prisons, as well as the right to unimpeded visits, remains a problem. No concrete steps were taken to implement this recommendation.

7. Legislative Review

7.1 Legislative Proposals and Amendments

Proposal to the Minister of Corrections and Legal Assistance on Amending the Decree No 97 of 30 May, 2011

On 6 August 2015 the Public Defender of Georgia addressed the Minister of Corrections and Legal Assistance with a proposal to amend decree # 97 of May 30, 2011, in order to allow a defendant/convict to possess and use not only copies of court judgments and decisions, but also copies of materials of the criminal case initiated against him, copies of materials of disciplinary, administrative or civil proceedings, as well as legislative acts and by laws.

⁹ Reply Letter N7196 / 15 received by Public Defender on 5 March 2015,

According to the decree # 97 of the Minister of Corrections and Legal Assistance, prisoners in penitentiary facilities are not allowed to keep legislative and normative acts or their case materials (except for copies of court judgments and decisions, money, and invoices of items and assets), since the mentioned documents belong to the category of prohibited items and their storage in the cell leads to criminal liability.

By the decree No 105, issued by the Ministry of Corrections and Legal Assistance of Georgia on 27 August 2015, the decree No 97 was invalidated. In addition, certain provisions were adopted by the Ministry for penitentiary facilities. Despite these amendments, the Public Defender's proposal was not reflected in the provisions.

The Public Defender considers that storage of documents by a defendant/convict in the cell does not represent any danger to order or security, especially given that possession of the mentioned documents is aimed at implementation of inmates' legitimate interests and rights through surveying the papers and formulating their own positions and arguments.

7.2 Review of International Standards

7.2.1 Inadmissibility of Reprisals or Sanctions for Filing Complaints on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment in International Law

One of the important components of fight against torture is enshrined in articles 13 and 14 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, according to which, each State Party shall ensure any individual with the right to complain against any competent authority and shall take steps to ensure that complainants and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given; in addition, each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation.¹⁰ Stronger protection of victims and witnesses contributes to full prevention of torture in practice.

¹⁰ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Adopted by General Assembly on 10 December 1984, A/RES/39/46

All requests or complaints should be promptly dealt with and replied to without undue delay. If a request or a complaint is not satisfied or is rejected because of delay, the complainant must be allowed to file a complaint with the court or any other body. No detainee or other complainant should suffer prejudice for lodging complaints or requests.¹¹

Pursuant to the European Prison Rules, if a request is denied or a complaint is rejected, reasons shall be provided to the prisoner and the prisoner shall have the right to appeal to an independent authority.¹² Prisoners shall not be punished because of having made a request or lodged a complaint.¹³

Effective procedures of submission and consideration of complaints is an important backbone for effective functioning of the system of prevention of torture. In its reports the European Committee for the Prevention of Torture (CPT) constantly underlines the importance of such procedures and inadmissibility of reprisals and sanctions for lodging a complaint. In particular, the Committee notes that "An effective complaints procedure is an important safeguard against ill-treatment and, more generally, will facilitate the proper running of a prison."¹⁴

The Committee notes that the disciplinary offence of making a false and malicious allegation against a prison officer could under certain circumstances deter prisoners who have a genuine grievance from lodging a complaint.¹⁵ Imposition of criminal penalties in similar cases is utterly unacceptable. Prevention of sanctions or reprisals is necessary, though it is not enough for creation of effective complaints mechanism.

The European Committee for the Prevention of Torture noted in its report on the visit to Ireland that many prisoners did not have confidence in the

¹¹UN Basic Principles for the Treatment of Prisoners, Principle 33

¹² European Prison Rules, 70.3

¹³ Id. 70.4

¹⁴ Report on the visit to the United Kingdom and the Isle of Man carried out by the European Committee for the Prevention of Torture in 6-17 September, 1997, CPT/Inf (2000), see at: <http://www.cpt.coe.int/documents/gbr/2000-01-inf-eng.htm> [last seen on 17:07.2015]

¹⁵ Id. 151.

¹³ Report on the visit to Ireland carried out by the European Committee for the Prevention of Torture on 2-13 October, CPT/Inf (2007) 40, par.37, see at: <http://www.cpt.coe.int/documents/irl/2007-40-inf-eng.htm> [last seen on 17.07.2015]

complaints system and did not wish to file a complaint, even when it involved ill-treatment.¹⁶ It is essential that complaint procedures offer appropriate guarantees of impartiality, and persons who may have been ill-treated should not be discouraged from pursuing a complaint.¹⁷

Thus, the efforts of the state, given its positive obligation, first of all, should be aimed at ensuring effective complaints system for victims of ill-treatment. Of course, deliberate hindrance in the efforts of the investigative body, provision of incorrect information and/or deliberate defamation against an innocent person, should lead to criminal liability, but there should exist special safeguards for prisoners. The state is obliged to protect inmates from possible reprisals because of lodging a complaint and ensure their security.

Protection of a person from a false allegation serves a legitimate goal, but this goal may be achieved through other means as well. Surveillance cameras, where they are installed within the law and without violation of the right to privacy, represent an important safeguard against false allegations about ill-treatment and torture. Such records represent evidence of essential, decisive importance.¹⁸ It should also be noted that according to the Subcommittee on the Prevention of Torture, proof of torture cannot and should not rely solely on existence of noticeable physical marks of violence.¹⁹

In the same report the Subcommittee says that the low number of complaints of torture is not a reliable indicator for evaluating the true extent of the fight against torture in Mexico. The Subcommittee believes that lack of confidence in the complaints system and expected prosecution for defamation tend to impact

negatively on the number of complaints filed, which is wholly unacceptable.²⁰

The state has special obligations with respect to inmates given the high risks related to them. In particular, the state which legitimately restricts a person's liberty assumes the obligation to ensure his/her physical protection. The state grants inmates, being in a vulnerable condition because of restriction of liberty, privileged statuses in order to prevent any shortcomings in the protection of their legal interests. Granting additional safeguards to this category of persons, on the one hand, balances the legal relationship between them and the state and, on the other hand, it is an attempt to equalize their condition to the legal condition of persons at liberty.

The abovementioned is a logical continuation of the internationally agreed idea that proper function of the Public Defender and the National Preventive Mechanism has a particular importance for the prevention or identification of ill-treatment. Initiation of criminal proceedings against prisoners and imposition of a liability on them for providing information to the Public Defender and his representatives create a conceptual risk to the institution, and therefore, the people's will that the state must take care of persons deprived of their liberty, guaranteed by the Constitution, cannot be fulfilled. More specifically, this can lead to an incorrect and dangerous practice; will endanger prevention and identification of ill-treatment; will discredit not only the Public Defender and the Public Defender's Office of Georgia, but will also nearly eliminate chances of effective implementation of the obligations undertaken by the state in terms of prevention of ill-treatment.

7.3 Reflection of International Standard in Internal Laws and Practice

Deprivation of liberty, which is characterized by special powers of the prison administration, contains a high risk in terms of torture, inhuman and degrading treatment. To reduce this risk, it is necessary to activate internal and external inspection mechanisms, which will ensure accountability of the administration and guarantee protection of the rights of prisoners. The Public Defender has repeatedly issued recommendations on implementation of objective

<http://www.cpt.coe.int/documents/irl/2007-40-inf-eng.htm>
[last seen on 17.07.2015]

¹⁷ Id.

¹⁸ 12th General Report on the CPT's activities (CPT/Inf (2002) 15) says that audio and/or video recording system can provide a complete and authentic record, thereby greatly facilitates the investigation of any allegations of ill-treatment. See the report at: <http://www.cpt.coe.int/en/annual/rep-12.htm> [Last seen on 17.07.2015]

¹⁹ Report on the visit of the Subcommittee on Prevention of Torture to Mexico from 27 August to 12 September, 2008, para. 87. See at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fOP%2fMEX%2f1&Lang=en [Last seen on 17.07.2015]

²⁰ Id. Para. 88

internal monitoring in the facilities in order to prevent ill-treatment.

Pursuant to the rule 55 of the Standard Minimum Rules for the Treatment of Prisoners, there shall be a regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be in particular to ensure that these institutions are administered in accordance with existing laws and regulations and with a view to bringing about the objectives of penal and correctional services.

We welcome the fact that on 1 July 2015 the state sub-agency –department of corrections - was liquidated and it was integrated with the Ministry as its structural unit. This change was followed by abolition of the monitoring division of the department of corrections, which could not provide effective internal control.

The abolition of the monitoring division of the department of corrections and transmission of the monitoring function to the General Inspection will presumably help the Ministry to carry out centralized management and proper inspection of the mentioned agency. It is also noteworthy that pursuant to the decree No 55 of the Minister of Corrections, a systemic monitoring division was set up in the General Inspection as its structural unit, the aim of which is to introduce a system of pre-monitoring and to eliminate the causes of problems. The Public Defender welcomes the changes and hopes that this standard will be effectively implemented in practice.

8. Focus

8.1 Characteristics of Execution of Deprivation of Liberty in High Security Penitentiary Facilities

In every country there will be a certain number of prisoners considered to present a particularly high security risk and hence to require special conditions of detention. The perceived high security risk of such prisoners may result from the nature of the offences they have committed, the manner in which they react to the constraints of life in prison, or their psychological/psychiatric profile.²¹

According to article 66² of the Code of Imprisonment of Georgia, “Prisoners that present or may present high risk to the penitentiary facility, other prisoners, public security or state/law enforcement agencies, are placed in high security penitentiary facilities”.²²

In accordance with the decree No 106 of the Ministry of Corrections, penitentiary establishments Nos. 3, 6 and 7 were granted the status of high security facilities. Therefore, it is important these institutions to be provided with the security system, which can ensure a fair balance between the protection of security and the respect for honor/dignity of the prisoner.

Classification of prisoners according to the degree of risk requires creation of special conditions of detention for them. Classification should be based on the nature of the offences the prisoners have committed or the manner in which they react to the constraints of life in prison.²³ This group of prisoners will (or at least should, if the classification system is operating satisfactorily) represent a very small proportion of the overall prison population. However, it is a group that is of particular concern to the Commission for the Prevention of Torture, as the need to take exceptional measures vis-à-vis such prisoners brings with it a greater risk of inhuman treatment.²⁴

The 27th rule of the UN Standard Minimum Rules for the Treatment of Prisoners stipulates that “discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life”.²⁵ Prisoners who present a particularly high security risk should, within the confines of their detention units, be granted a good deal of choice about activities by way of compensation for their severe custodial situation. Special efforts should be made to develop positive relations between staff and prisoners. This is in the interests not only of the humane treatment of the unit's occupants but also of the maintenance of effective control and security of staff.

The existence of a satisfactory programme of activities is just as important - if not more so - in a high security unit than on normal location.²⁶ The activities provided should be as diverse as possible (education, sport, work

²¹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 11th General Report, covering the period 1 January to 31 December 2000, para. 32, See at: http://www.cpt.coe.int/en/annual/rep-11.htm#_Toc523890679, [Last seen on 08.04.2015]

²² Code of Imprisonment of Georgia, article 66

²³ Footnote 21

²⁴ Id

²⁵ UN Standard Minimum Rules for the Treatment of Prisoners, rule 27

²⁶ Footnote 21,

of vocational value, etc.). As regards, in particular, work activities, it is clear that security considerations may preclude many types of work which are found on normal prison location. Nevertheless, this should not mean that only work of a tedious nature is provided for prisoners.²⁷

9. Expert's Opinion

Member of Consultative Council of the National Mechanism

Givi Miqanadze



Importance of CPT Standards in Protection of Human Rights

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) is one of the most authoritative international mechanisms, which monitors human rights in places where persons are deprived of their liberty (temporary detention facilities; penitentiary institutions, psychiatric hospitals, etc).

The CPT has developed standards²⁸ as a result of its 25- year activities, through which the state of human rights is assessed in the Council of Europe member states and which serve as guidelines for the European Court of Human Rights when considering cases concerning violation of article 3 of the European Convention with regard to persons placed in penitentiary facilities (Case of Vasilescu v. Romania²⁹, *Varga and Others v Hungary*³⁰).

During visits to prison facilities, the CPT studies a number of issues; it attaches special attention to

²⁷ Id

²⁸ Standards of European Committee for the Prevention of Torture, Edition of Council of Europe Georgia Office, Tbilisi, 2014, see at: [<http://www.cpt.coe.int>].

²⁹ (*Affaire Vasilescu v Belgium*), complaint #64682/12, judgment 18.03.2014, see at: [http://hudoc.echr.coe.int/eng?i=001-148507#{"itemid":\["001-148507"\]}](http://hudoc.echr.coe.int/eng?i=001-148507#{)].

³⁰ (*Varga and Others v Hungary*), complaints #14097/12, #45135/12, #73712/12, #34001/13, #44055/13, #64586/13, judgment 10.06.2015, see at: [http://hudoc.echr.coe.int/eng?i=001-152784#{"itemid":\["001-152784"\]}](http://hudoc.echr.coe.int/eng?i=001-152784#{)].

prisoners' any complaint about ill-treatment by staff. However, the CPT's mandate covers all aspects of the situation in the detention facilities. Ill-treatment may be expressed in various forms, many of which may be not deliberate but a result of organizational mistakes and the lack of sufficient resources. Consequently, the overall quality of life in the facilities is of great importance for the CPT. The overall quality of life, together with other circumstances, largely depends on the types of activities offered to prisoners, which is one of the problematic issues in Georgia. In 2014 the Public Defender of Georgia noted in his report that rehabilitation programs were carried out in the penitentiary facilities Nos. 2, 5, 8, 11, 12, 14, 15 and 17, during which inmates had the opportunity to take part in cultural activities, get general/vocational education and develop a variety of skills, though the data analysis shows that the involvement of prisoners in the activities was not satisfactory; the variety of offered activities was not sufficient either.³¹

Among other issues, overcrowding is an issue of direct relevance to the CPT's mandate. All the services and activities within a prison will be adversely affected if it is required to cater for more prisoners than it was designed to accommodate; the overall quality of life in the establishment will be lowered, perhaps significantly. Moreover, the level of overcrowding in a prison, or in a particular part of it, might be such as to be in itself inhuman or degrading from a physical standpoint.³² In 2006-2012 Georgia was one of the leading countries in Europe and in the world in terms of overcrowding in prisons (2006 - 352, 2008 - 426, 2010 - 530, 2012 - 432 defendant/ convict – per 100,000 of national population)³³. Overcrowding was recognized as inhuman or degrading treatment with respect to a number of persons deprived of liberty (Case of Aliev v. Georgia³⁴, Case of Ramishvili and Kokhreidze v. Georgia³⁵), in compliance with article 3 of the European Convention on Human Rights.

³¹ Report of the Public Defender of Georgia on the Situation in Human Rights and Freedoms, 2014, pages 93 and 96, see at: <http://www.ombudsman.ge/uploads/other/2/2439.pdf>

³² *Id*, para.46

³³ Information based on data of World Prison Brief, see at: <http://www.prisonstudies.org/country/georgia>

³⁴ (*Aliyev v Georgia*), complaint #522/04, judgment 13.04.2009, see at: <http://justice.gov.ge/Multimedia%2FFiles%2Fgadackvetilebebi%2Falievi.pdf>.

³⁵ (*Ramishvili and Kokhreidze v Georgia*), complaint #1704/06, judgment 27.04.2009, see at: [<http://justice.gov.ge/Multimedia%2FFiles%2Fgadackvetilebebi%2Framishvili%20koxreidze.pdf>].

The CPT efforts made it possible to solve many problematic issues; for example, the CPT pays particular attention to prisoners held in solitary confinement and it established that the measure can have very harmful consequences for the person concerned. The CPT considers that the principle of proportionality requires that it be used as a disciplinary punishment only in exceptional cases and as a last resort, and for the shortest possible period of time. The CPT considers that the maximum period should be no higher than 14 days for a given offence, and preferably lower for juveniles.³⁶ This recommendation of the CPT was the basis for the amendment made to the Code of Imprisonment of Georgia in 2015, according to which, the maximum period of solitary confinement is reduced from 20 to 14 days,³⁷ while the measure is not used with regard to juveniles at all.³⁸

However, the Georgian legislation does not consider the CPT standard which calls on prohibition of sequential disciplinary sentences resulting in an uninterrupted period of solitary confinement in excess of the maximum period.³⁹

The 15-year cooperation between the Georgian Government and the CPT in the field of corrections has been constructive. This has been reflected in the visits of the CPT and in the implementation of a number of recommendations. However, it should be noted that a number of important issues still remain unfulfilled and the Government has to take essential steps in this direction. In terms of prevention, it is recommended that the reports drawn up by the CPT on other countries be studied. As a result, the Government should focus on analyzing the violations revealed in those countries and implementing the CPT recommendations in the Georgian reality.

10. International News

The Center for Human Rights & Humanitarian Law at American University Washington College of Law is successfully carrying out the Anti-torture Initiative

project.⁴⁰ UN Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment Juan Mendes is actively involved in the project.

The project is aimed at assisting the Special Rapporteur in strengthening of the mandate and strategy on fight against torture and other cruel, inhuman or degrading treatment or punishment. To achieve this goal, the project supports the Special Rapporteur to support, monitor, and assess implementation of recommendations; and to provide a multi-dynamic model for effective thematic and country-specific follow-up.

One of the integral parts of the initiative is the movement - Torture Free World, which is aimed at creating an international forum with engagement of various organizations/private individuals and encouraging the fight against torture.

On 27 June 2015 the aforementioned organization carried out a number of important events. Among them was preparation of a video with participation of selected heads of National Preventive Mechanisms from Norway, Senegal, Kirgizstan, Paraguay and Georgia. In the video address the participants discuss what Torture Free World means to them⁴¹.

11. Future Events

In 2015 the National Preventive Mechanism will present a report which will include results of a survey on effectiveness of complaints/requests procedures in the penitentiary system and the degree of prisoners' confidence in these procedures. The survey is carried out by the financial support from the Open Society – Georgia and includes both social survey and analysis of laws and practices.

In addition, the National Preventive Mechanism is currently processing a large volume of data obtained during the monitoring of police divisions and temporary detention facilities of the Ministry of Internal Affairs. The monitoring results are planned to be presented to the public by the end of 2015.

³⁶ Extract from the 21th General Report [CPT/Inf. (2011) 28], par. 56(b).

³⁷ Amendment to the Code of Imprisonment of Georgia (N3523, 2015, 1 May), article 54, see at: <https://matsne.gov.ge>

³⁸ Code of Imprisonment of Georgia, article 71¹, par. 1, see at: <https://matsne.gov.ge>

³⁹ Extract from the 21th General Report [CPT/Inf. (2011) 28], par. 56(b).

⁴⁰ Anti-torture Initiative, see at:

<http://antitorture.org/about-the-project/> [last seen on 14.07.2015]

⁴¹ Torture Free World, see at:

<http://torturefreeworld.wix.com/torture-free-world#lour-videos/c21kz> [last seen on: 07.09.2015]



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